ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Merrillville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ALEXANDER MICHAEL PEEBLES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0610-CR-551
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-0602-FA-7

August 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Alexander M. Peebles ("Peebles") appeals his convictions and four-year sentence for various crimes related to the confinement and beating of his ex-girlfriend, Frances Cleveland ("Cleveland"). Specifically, he contends that the evidence is insufficient to support three of his convictions—criminal confinement, intimidation, and criminal recklessness—and that his sentence is inappropriate. Finding that the evidence is sufficient to support Peebles' convictions and that his sentence is not inappropriate in light of the nature of his offenses and character, we affirm the trial court.

Facts and Procedural History

The facts most favorable to the verdict show that Peebles and Cleveland began dating sometime in the spring of 2005. About two weeks later, the couple moved in with Peebles' mother in Hammond, Indiana. Peebles and Cleveland then moved to Chicago, Illinois, but were forced out of their apartment because of a fire. As a result, the couple moved to East Chicago, Indiana. After Peebles beat Cleveland, she moved into a battered women's shelter. Nevertheless, the couple continued to have sexual relations and frequently argued about insurance money that the couple had received because of the apartment fire.

Around 4:00 p.m. on January 25, 2007, Cleveland was sitting in her car, which was parked outside her friend's apartment in Chicago, when Peebles opened the passenger door and jumped in. Peebles said, "[B]it**, you thought I was never going to find you." Tr. p. 126. He then began beating her with his fists, a cell phone, and a screwdriver. Peebles threatened Cleveland that he was going to get his money back

whether he had to "beat" her or "pimp [her] out." *Id.* at 129. Cleveland tried to escape, but Peebles pulled her back into the car by her hair. When Cleveland refused to drive off with him in the car, Peebles shoved her into the passenger seat and drove away himself.

Peebles drove Cleveland to the home of Jalainea Leslie ("Leslie"), the mother of one of his children. As he drove, Peebles continued to hit Cleveland, who begged to be let out of the car. Once they arrived at her apartment, Leslie entered the car, and Peebles had Cleveland sign a document in Leslie's presence that Cleveland was giving Peebles her car in return for the money that she owed him. The beatings continued during the execution of this document.

Peebles then drove Cleveland to the East Chicago apartment that they had shared, beating her en route. Peebles led Cleveland into the apartment by her arm. Once inside, Peebles resumed hitting Cleveland. He then pushed her to the ground, stomped on her back, and kicked her in the legs, chest, and stomach. Peebles also struck Cleveland with an extension cord. All the while Cleveland was crying for help.

Peebles and Cleveland remained in the apartment overnight. Peebles had Cleveland' car keys and kept her in his line of sight the entire time. Although Cleveland assured Peebles that she would eventually repay him, Peebles continued with the threats and told Cleveland that he "owned" her until he was paid back. *Id.* at 166. At one point, Peebles grabbed a lamp and "tr[ied] to burn [Cleveland's] vagina with the lamp light bulb." *Id.* at 162. Later on, Peebles poured rubbing alcohol on Cleveland's naked body, lit a piece of paper on fire, and told Cleveland that "he was going to set [her] ass on fire."

Id. Peebles placed the lit paper close enough to Cleveland's body that she could feel the heat.

Around 8:00 a.m. the next morning, Peebles drove Cleveland to Calumet City to look at a car that he wanted to purchase. When Peebles exited the car, leaving Cleveland alone inside, she called 911 using her cell phone. Soon thereafter, a police car approached the area, and Peebles quickly returned to the car and drove off with Cleveland. Peebles immediately called the people who were selling the car, and they told him that the police were looking for "Frances Cleveland." Peebles turned to Cleveland and said, "[B]it**, you did call the police on me." *Id.* at 186. He then slapped her in the face.

Peebles drove Cleveland to his mother's apartment and led her inside by her neck. Once inside, Peebles punched Cleveland on the back of her head. Two of Peebles' sons were there, and while Cleveland was crying for help, Peebles told them that Cleveland was a "whore" and a "bit**" and that this is how you treat such women. *Id.* at 219. Peebles had Cleveland's car keys and cell phone and told her that she was not going anywhere until she paid him. Around 6:00 p.m., Peebles' mother came home and asked Cleveland what was wrong. After Cleveland told Peebles' mother what had happened, Peebles explained that he had beaten Cleveland because she owed him money. Peebles' mother told him to stop hitting women, and Peebles responded by again punching Cleveland on the back of her head. Later that evening, Cleveland told Peebles' mother that if she was not allowed to leave, she was going to call the police. Peebles' mother instructed him to let Cleveland go because she did not want the police at her house.

Eventually, Peebles gave Cleveland her car keys, and Cleveland went straight to her aunt's house in Chicago. Cleveland's aunt immediately called the police, and Cleveland was transported to South Shore Hospital. Cleveland had bruises on her face, back, arms, and legs, swollen eyes, knots on her head, and scratch marks on her neck.

The State charged Peebles with Count I: Rape as a Class A felony; Count II: Criminal Deviate Conduct as a Class A felony; Count III: Criminal Confinement as a Class B felony; Count IV: Criminal Confinement as a Class B felony; Count V: Intimidation as a Class C felony; Count VI: Battery as a Class C felony; and Count VII: Criminal Recklessness as a Class D felony. Peebles testified in his own defense at trial. Specifically, he admitted to battery, but he denied all of the other charges. The jury found Peebles not guilty of Counts I and II and guilty of Count III: Criminal Confinement as a Class D felony;[1] Count IV: Criminal Confinement as a Class D felony;[2] Count V: Intimidation as a Class A misdemeanor;[3] Count VI: Battery as a Class A misdemeanor;[4] and Count VII: Criminal Recklessness as a Class B misdemeanor.[5] The trial court did not enter judgment of conviction for Count IV. Finding two aggravators—Peebles' criminal history and that he "has been given the benefit of short term incarceration in a penal facility and that has not deterred [his] criminal behavior," Tr. p. 805—and no mitigators, the trial court sentenced Peebles to

[1] Ind. Code § 35-42-3-3.

[2] *Id.*

[3] Ind. Code § 35-45-2-1.

[4] Ind. Code § 35-42-2-1.

[5] Ind. Code § 35-42-2-2.

two years for Count III, one year for Count V, one year for Count VI, and 150 days for Count VII. The court ordered the sentences for Count III, V, and VI to be served consecutively and the sentence for Count VII to be served concurrently, for an aggregate term of four years.[6] Peebles now appeals.

Discussion and Decision

Peebles raises two issues on appeal. First, he contends that the evidence is insufficient to support his convictions for criminal confinement, intimidation, and criminal recklessness.[7] Second, he contends that his sentence is inappropriate.

I. Sufficiency of the Evidence

Peebles first argues that the evidence is insufficient to support his conviction for Count III: Criminal Confinement as a Class D felony. In order to sustain this conviction, the State must have proved that Peebles "remove[d] [Cleveland], by fraud, enticement, force, or threat of force, from one (1) place to another." Ind. Code § 35-42-3-3.[8] On

---

[6] To support consecutive sentences, the trial court remarked:

> The reason for consecutive sentencing is that it was an ongoing event and while the victim's credibility was questioned by the jury and she was a bit vague and did things during the confinement and this ongoing activity on January 25 and 26, 2006, the objective evidence, namely her black eye, was evidence that what she said likely had happened. That's one reason, and the other reason that the Court is imposing consecutive sentences is because of the defendant's past attempts at rehabilitation have been unsuccessful and the defendant is in need of an extended period of time of incarceration to change his life-style and mode of thinking, in that the defendant has a criminal mind and continues to engage in criminal activity.

Tr. p. 806-07.

[7] Peebles does not challenge the sufficiency of the evidence for his battery conviction.

[8] We observe that the Indiana Supreme Court recently ruled that the "fraud" and "enticement" elements of the criminal confinement statute are void for vagueness and therefore unconstitutional. *Brown v. State*, 868 N.E.2d 464, 469 (Ind. 2007). Because this case does not involve fraud or enticement, *Brown* does not affect our resolution of this issue.

appeal, Peebles asserts that the evidence is insufficient because "the evidence reveals that if Cleveland was being held against her will, she had ample opportunity to complain to persons who were around her, or to escape and seek help . . . . In light of the[se] . . . opportunities, Cleveland's testimony must be viewed as inherently improbable and therefore inadequate to support Peebles' conviction." Appellant's Br. p. 6. Peebles is invoking the incredible dubiosity rule.

The incredible dubiosity rule provides that a court may "impinge on the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). The application of this rule is limited to where the sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. Our Supreme Court has recognized that "application of this rule is rare and that the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (citation omitted).

Peebles misunderstands the incredible dubiosity rule. In support of his argument on appeal that this rule applies, Peebles cites to differences between Cleveland's testimony and other witnesses' testimony. However, this rule only applies when one witness's testimony is inherently improbable; it does not apply when there is witness testimony contradicting another witness's testimony. As such, Peebles is simply inviting

us to weigh the evidence and assess witness credibility, which we cannot do. *See Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). The evidence most favorable to the verdict reveals that Peebles approached Cleveland while she was in her car, beat her, forced her into the passenger seat, and drove away with her inside. Peebles also took Cleveland to the apartment that they had shared and led her inside by her arm, continuing to beat her once inside. Finally, Peebles took Cleveland to his mother's apartment and led her inside by her neck, also beating her once inside. This evidence is sufficient to prove that Peebles removed Cleveland, by force or threat of force, from one place to another. We therefore affirm his conviction for criminal confinement.

Peebles next argues that the evidence is insufficient to support his intimidation and criminal recklessness convictions. Peebles mounts the following challenge to these convictions: "Both the intimidation and criminal recklessness conviction[s] were based on the wholly uncorroborated testimony of 'inherent improbability' of Cleveland" and therefore "the convictions should be reversed." Appellant's Br. p. 9; *see also id.* at 8 ("Because Peebles has shown that [Cleveland's] testimony was inherently improbable to support the confinement conviction, it follows that the intimidation evidence cannot sustain the requisite proof of beyond a reasonable doubt."). Because we determined above that the incredible dubiosity rule does not apply to Cleveland's testimony, Peebles' sufficiency challenge to these convictions also fails. To sustain Peebles' conviction for intimidation, the State must have proved that he communicated a threat to Cleveland with the rubbing alcohol and fire with the intent that Cleveland engage in conduct against her will, that is, repay Peebles. Ind. Code § 35-45-2-1. To sustain Peebles' conviction for

criminal recklessness, the State must have proved that Peebles recklessly, knowingly, or intentionally performed an act that created a substantial risk of bodily injury to Cleveland by pouring rubbing alcohol on her, setting a piece of paper on fire, and holding that piece of paper close to Cleveland. Ind. Code § 35-42-2-2. The evidence is sufficient to support Peebles' intimidation and criminal recklessness convictions.

II. Inappropriate Sentence

Last, Peebles contends that the trial court "abused its discretion" in sentencing him to an aggregate term of four years. Appellant's Br. p. 9. In making this argument, we emphasize that Peebles does not challenge the trial court's finding of the two aggravators and no mitigators. Rather, he challenges the weight of the aggravators and mitigators. The Indiana Supreme Court recently held in *Anglemyer v. State*, in pertinent part:

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. . . . This does not mean however that criminal defendants have no recourse in challenging sentences they believe are excessive.

868 N.E.2d 482, 491 (Ind. 2007). Specifically, our Supreme Court stated that although a trial court may have acted within its lawful discretion in determining a sentence, the Indiana Constitution authorizes independent appellate review and sentence revision, which is implemented through Indiana Appellate Rule 7(B). In light of *Anglemyer*, we construe Peebles' argument on appeal as one that his sentence is inappropriate pursuant to Appellate Rule 7(B).

Appellate Rule 7(B) states: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is

inappropriate in light of the nature of the offense and the character of the offender." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied, cert. denied*, 547 U.S. 1026 (2006). The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Peebles' sentence is inappropriate.

The nature of the offenses is horrific. Peebles confined Cleveland for over twenty-four hours, beat her incessantly, and doused her in alcohol and threatened to set her on fire, all because of an alleged debt. Peebles' character does not fare much better. The record shows that he has four felony convictions for burglary and one misdemeanor conviction for domestic battery. For these convictions, Peebles received either short sentences or no sentences. He has failed to take advantage of the criminal justice system's leniency and has continued on a path of crime. Given the nature of the offense and his character, Peebles has failed to persuade us that his four-year sentence for confining and beating his ex-girlfriend is inappropriate. We therefore affirm the trial court.

Affirmed.

SULLIVAN, SR. J., and ROBB, J., concur.